

CRIMINAL APPEAL No 1011 of 1992

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

3. Whether

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

MAHENDRABHAI BHAILALBHAI PATEL

Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for  
the Appellant - State.

Shri Adil Mehta, Advocate, for the Respondent  
(Appointed).

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 30/09/96

ORAL JUDGEMENT

The order of closure of proceeding passed by the learned 2nd Joint Judicial Magistrate (First Class) at Anand on 20th May 1992 under Section 258 of the Code of Criminal Procedure, 1973 (the Cr.PC for brief) in Criminal Case No.1397 of 1988 is under challenge in this

appeal under Section 378 thereof.

2. It is not necessary to set out in detail the facts giving rise to this appeal. The respondent herein was alleged to have committed the offences punishable under sections 279 and 338 of the Indian Penal Code, 1860 (the IPC for brief) and under Sections 112 and 116 of the Motor Vehicles Act, 1939. The necessary chargesheet was submitted in the court of the Judicial Magistrate (First Class) at Anand on 17th February 1988. It came to be registered as Criminal case No.1397 of 1988. The charge against the respondent - accused was framed on 23rd November 1989 at Exh.3 on the record of the trial court. He did not plead guilty to the charge. It appears that the respondent - accused appeared through his Advocate also and certain applications for time were made by and on behalf of his Advocate and they were granted. The proceeding shows presence of the accused on several dates. It however appears that the learned trial Magistrate gathered an impression that the process against the respondent - accused was issued but it was received back on the ground that his address was not proper. It appears that the prosecution also did not keep witnesses present. It appears that, out of exasperation, the learned trial Magistrate terminated the proceeding under Section 258 of the Cr.PC mainly on the ground that the prosecution failed to give the correct address of the accused and also on the ground that the prosecution did not keep its witnesses present.

3. The respondent - accused has been served. He has however not chosen to appear either in person or through any Advocate. At this stage, I tried to ascertain from learned Advocate Shri Adil Mehta present in the courtroom whether or not he could get himself prepared at a short notice so that he can be appointed to appear for the respondent - accused in this case. On his showing willingness for the purpose, I have appointed learned Advocate Shri Adil Mehta to appear for the respondent accused in this case. Learned Advocate Shri Adil Mehta waives service of Rule on behalf of the respondent accused in view of his appointment to represent the respondent - accused in appeal.

4. Learned Advocate Shri Adil Mehta for the respondent has raised a preliminary objection against maintainability of this appeal under Section 378 of the Cr.PC. He has submitted that the order under Section 258 of the Cr.PC would amount to discharge and not acquittal of the accused. In that case, runs the submission of learned Advocate Shri Adil Mehta for the respondent

accused, the order is revisable under Section 397 of the Cr.PC but not appealable under Section 378 thereof.

5. I think learned Advocate Shri Adil Mehta for the respondent - accused is right in his submission in view of the binding ruling of the Supreme Court in the case of MUNICIPAL CORPORATION OF DELHI v. GIRDHARILAL SAPURU reported in AIR 1981 Supreme Court at page 1169. It has been held therein that the discharge order terminates the proceeding and it is therefore revisable under Section 397 (1) of the Cr.PC.

6. At this stage, learned Additional Public Prosecutor Shri S.T.Mehta for the appellant has sought leave to convert this proceeding into a revisional application under Section 397 of the Cr.PC. Such oral request is accepted and this proceeding is ordered to be treated as a revisional application under Section 397 (1) of the Cr.PC. Service of rule would not be necessary as learned Advocate Shri Adil Mehta has been appointed to represent the respondent - accused.

7. As pointed out hereinabove, the process was served to the respondent - accused and his plea was also recorded and he did not plead guilty to the charge. In that view of the matter, it is strange and surprising that the learned trial Magistrate observed that the statement of the accused could not be recorded under Section 251 of the Cr.PC in absence of sufficient details regarding his address. As pointed out hereinabove, his statement was recorded and he did not plead guilty to the charge. That would go to show that the learned trial Magistrate entertained some wrong impression that the accused was not served.

8. So far as non-production of witnesses on the part of the prosecution is concerned, this court has time and again impressed upon the subordinate courts with respect to its powers in that regard. The latest ruling on the point is the one in the case of STATE OF GUJARAT v. RAJENDRASINH RAMJANSINH reported in III (1996) Current Criminal Reports at page 152. The learned trial Magistrate ought to have kept that ruling and other rulings mentioned therein in mind before stopping the proceeding under Section 258 of the Cr.PC on the grounds stated therein.

9. In view of my aforesaid discussion, I am of the opinion that the order passed by the learned trial Magistrate on 20th May 1992 under Section 258 of the Cr.PC in Criminal Case No.1397 of 1988 cannot be

sustained in law. It has to be quashed and set aside. The matter deserves to be remanded to the learned trial Magistrate for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

10. In the result, this revisional application is accepted. The order passed by the 2nd Joint Judicial Magistrate (First Class) at Anand on 20th May 1992 under Section 258 of the Cr.PC in Criminal Case No.1397 of 1988 is quashed and set aside. The matter is remanded to the learned trial Magistrate for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute.

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